

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to five-year rules review

The Human Services Department hereby amends Chapter 82, “Intermediate Care Facilities for Persons with an Intellectual Disability,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 249A.4.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 249A.4.

Purpose and Summary

Chapter 82 was reviewed as part of the Department’s five-year rules review. Chapter 82 sets out requirements for intermediate care facilities for persons with an intellectual disability, including licensing and certification, staffing and treatment, individual program plans, Medicaid participation, financial and statistical reports, eligibility for services, billing procedures and audits. This rules review resulted in technical changes. References to federal regulations are updated to provide accurate listings. Names of forms and outdated references are removed. The word “enterprise” is removed from the Iowa Medicaid name. Outdated language is removed from cost reporting rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 5, 2022, as **ARC 6589C**. No public comments were received. No changes from the Notice have been made.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on December 8, 2022.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 1, 2023.

The following rule-making actions are adopted:

ITEM 1. Amend rule **441—82.1(249A)**, definition of “Intermediate care facility for persons with an intellectual disability level of care,” as follows:

“Intermediate care facility for persons with an intellectual disability level of care” means that the individual has a diagnosis of intellectual disability made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association; or has a related condition as defined in 42 CFR 435.1009 as amended to March 29, 2022; and needs assistance in at least three of the following major life areas: mobility, musculoskeletal skills, activities of daily living, domestic skills, toileting, eating skills, vision, hearing or speech or both, gross/fine motor skills, sensory-taste, smell, tactile, academic skills, vocational skills, social/community skills, behavior, and health care.

ITEM 2. Amend subparagraph **82.2(3)“b”(5)** as follows:

(5) Professional program staff shall be licensed, certified, or registered, as applicable, to provide professional services by the state in which the staff practices. Those professional program staff who do not fall under the jurisdiction of state licensure, certification, or registration requirements shall meet the following qualifications:

1. to 8. No change.

9. To be designated as a professional dietitian, an individual shall be eligible for registration by the ~~American Dietetics Association~~ Academy of Nutrition and Dietetics.

10. To be designated as a human services professional, an individual shall have at least a bachelor’s degree in a human services field (including, but not limited to, sociology, special education, rehabilitation counseling ~~and or~~ psychology).

ITEM 3. Amend subparagraph **82.2(4)“b”(4)** as follows:

(4) If a client is to be either transferred or discharged, the facility shall have documentation in the client’s record that the client was transferred or discharged for good cause; and shall provide a reasonable time to prepare the client and the client’s parents or guardian for the transfer or discharge (except in emergencies).

ITEM 4. Amend subparagraph **82.2(4)“c”(3)** as follows:

(3) Within 30 days after admission, the interdisciplinary team shall perform accurate assessments or reassessments as needed to supplement the preliminary evaluation conducted prior to admission. The comprehensive functional assessment shall take into consideration the client’s age (for example, child, young adult, elderly person) and the implications for active treatment at each stage, as applicable, and shall:

1. to 4. No change.

5. Include physical development and health, nutritional status, sensorimotor development, affective development, speech and language development, ~~and~~ auditory functioning, cognitive development, social development, adaptive behaviors or independent living skills necessary for the client to be able to function in the community, and, ~~as applicable~~, vocational skills as applicable.

ITEM 5. Amend subparagraph **82.2(5)“a”(1)** as follows:

(1) The facility shall develop and implement written policies and procedures for the management of conduct between staff and clients. These policies and procedures shall:

1. Promote the growth, development, and independence of the client.

2. to 4. No change.

ITEM 6. Amend subparagraph **82.2(6)“f”(1)** as follows:

(1) A complete extraoral and intraoral examination, using all diagnostic aids necessary to properly evaluate the client’s oral condition, not later than one month after admission to the facility unless the examination was completed within 12 months ~~before~~ prior to admission.

ITEM 7. Amend paragraph **82.2(6)“n”** as follows:

n. Laboratory services.

(1) No change.

(2) If a facility chooses to provide laboratory services, the laboratory shall meet the management requirements specified in 42 CFR 493.1407 as amended to March 29, 2022, and provide personnel to direct and conduct the laboratory services.

The laboratory director shall be technically qualified to supervise the laboratory personnel and test performance and shall meet licensing or other qualification standards established by the state with respect to directors of clinical laboratories.

The laboratory director shall provide adequate technical supervision of the laboratory services and ensure that tests, examinations and procedures are properly performed, recorded and reported.

The laboratory director shall ensure that the staff has appropriate education, experience, and training to perform and report laboratory tests promptly and proficiently; is sufficient in number for the scope and complexity of the services provided; and receives in-service training appropriate to the type of complexity of the laboratory services offered.

The laboratory technologists shall be technically competent to perform test procedures and report test results promptly and proficiently.

(3) The laboratory shall meet the proficiency testing requirements specified in 42 CFR 493.801 as amended to March 29, 2022.

~~(4) The laboratory shall meet the quality control requirements specified in 42 CFR 493.1501.~~

~~(5)~~ (4) If the laboratory chooses to refer specimens for testing to another laboratory, the referral laboratory shall be an approved Medicare laboratory.

ITEM 8. Amend paragraph **82.3(1)“b”** as follows:

b. The facility shall request an application, Form 470-0254, ~~Iowa Medicaid Provider Enrollment Application~~, from the Iowa Medicaid ~~enterprise~~ provider services unit.

ITEM 9. Amend subrule 82.5(3) as follows:

82.5(3) Submission of reports. The facility’s cost report shall be received by the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit no later than September 30 each year except as described in subrule 82.5(14).

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3)“c.”

b. No change.

c. Failure to timely submit the complete report shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit.

d. No change.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid ~~enterprise~~ when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 10. Amend paragraph **82.5(11)“e”** as follows:

e. A reasonable allowance of compensation for services of owners or immediate relatives is an allowable cost, provided the services are actually performed in a necessary function. For this purpose, the following persons are considered immediate relatives: husband and wife; natural parent, child and sibling; adopted child and adoptive parent; stepparent, stepchild, stepbrother and stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, and sister-in-law; grandparent and grandchild. Adequate time records shall be maintained. Adjustments may be necessary to provide compensation as an expense for nonsalaried working proprietors and partners. Members of religious orders serving under an agreement with their administrative office are allowed salaries paid persons performing comparable services. When maintenance is provided these persons by the facility, consideration shall be given to the value of these benefits and this amount shall be deducted from the amount otherwise allowed for a person not receiving maintenance.

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid ~~enterprise~~ provider cost audit and rate setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3)“c.”

(2) Reasonableness—requires that the compensation allowance be such an amount as would ordinarily be paid for comparable services by comparable institutions; and depends upon the facts and circumstances of each case.

(3) No change.

(4) The base maximum allowed compensation for an administrator who is involved in ownership of the facility or who is an immediate relative of an owner of the facility is \$1,926 per month plus \$20.53 per month per licensed bed capacity for each bed over 60, not to exceed \$2,852 per month. An administrator is considered to be involved in ownership of a facility when the administrator has ownership interest of 5 percent or more.

On a ~~semiannual~~ annual basis, the maximum allowed compensation amounts for these administrators shall be increased or decreased by the inflation factor applied to facility rates.

(5) to (7) No change.

ITEM 11. Amend subparagraph **82.5(12)“a”(4)** as follows:

(4) When a participating facility is leased, a transfer of ownership is considered to have taken place. When the entire facility is leased, the total agreement with the lessor terminates. When only part of the facility is leased, the agreement remains in effect with respect to the unleased portion, but terminates with respect to the leased portion.

ITEM 12. Amend paragraph **82.5(14)“b,”** introductory paragraph, as follows:

b. Initial cost report. Following six months of operation as a Medicaid-certified ICF/ID, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). ~~For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index.~~ Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

ITEM 13. Amend subparagraph **82.5(14)“d”(1)** as follows:

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year's maximum allowable base by the annual percentage increase of the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the prior year's maximum allowable base cost shall be increased by 3 percent, instead of the annual percentage increase of the Consumer Price Index.~~

ITEM 14. Amend paragraph **82.5(14)“e”** as follows:

e. Maximum rate. Facilities shall be subject to a maximum rate set at the eightieth percentile of the total per diem cost of all participating community-based ~~ICFs/MR~~ ICFs/ID with established base rates. The eightieth percentile maximum rate shall be adjusted July 1 of each year using cost reports on file December 31 of the previous year.

ITEM 15. Amend paragraph **82.5(14)“f,”** introductory paragraph, as follows:

f. Incentive factor. New facilities which complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.5(14)“d,” shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem cost for the annual period just completed is the incentive factor. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the incentive factor shall be calculated using 3 percent in place of the percentage increase of the Consumer Price Index.~~

ITEM 16. Amend subparagraph **82.5(14)“g”(1)** as follows:

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index ~~plus one.~~ ~~For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.~~

ITEM 17. Amend subrule 82.5(16) as follows:

82.5(16) Payment to existing facilities. The following reimbursement limits shall apply to all non-state-owned ~~ICFs/MR~~ ICFs/ID:

a. to c. No change.

d. Facilities which have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index ~~or of less than 3 percent for rates effective July 1, 2009, through June 30, 2010,~~ shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) No change.
(2) Facilities whose annual per unit cost decreased from the prior year shall receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment. ~~For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used in lieu of the percentage increase in the Consumer Price Index.~~

e. Administrative costs shall not exceed 18 percent of total facility costs. Administrative costs are comprised of those costs incurred in the general management and administrative functions of the facility. Administrative costs include, but are not necessarily limited to, the administrative portion of the following:

- ~~(1) Administrator's salary.~~
- ~~(2) Assistant administrator's salary.~~
- ~~(3) Bookkeeper's salary.~~
- ~~(4) Other accounting and bookkeeping costs.~~
- ~~(5) Other clerical salaries and clerical costs.~~
- ~~(6) Administrative payroll taxes.~~
- ~~(7) Administrative unemployment taxes.~~
- ~~(8) Administrative group insurance.~~
- ~~(9) Administrative general liability and worker's compensation insurance.~~
- ~~(10) Directors' and officers' insurance or salaries.~~
- ~~(11) Management fees.~~
- ~~(12) Indirect business expenses and other costs related to the management of the facility including home office and other organizational costs.~~
- ~~(13) Legal and professional fees.~~
- ~~(14) Dues, conferences and publications.~~
- ~~(15) Postage and telephone.~~
- ~~(16) Administrative office supplies and equipment, including depreciation, rent, repairs, and maintenance as documented by a supplemental schedule which identifies the portion of repairs and maintenance, depreciation, and rent which applies to office supplies and equipment.~~
- ~~(17) Data processing and bank charges.~~
- ~~(18) Advertising.~~
- ~~(19) Travel, entertainment and vehicle expenses not directly involving residents.~~
- (1) Administrator wages.
- (2) Business office wages.
- (3) Advertising and marketing wages.
- (4) Employer's taxes (administrative).
- (5) Group/life and retirement benefits (administrative staff).
- (6) Workers' compensation insurance (administrative staff).
- (7) Employment advertising and recruitment (administrative staff).
- (8) Criminal record checks (administrative staff).
- (9) Education and training (administrative staff).
- (10) Office supplies (administrative staff).
- (11) Telephone.
- (12) Equipment rental.
- (13) Home office costs.
- (14) Management fees.
- (15) Accounting fees.
- (16) Professional organization dues.
- (17) Licensing fees.
- (18) Information technology expenses.
- (19) Legal fees—direct patient-care-related.
- (20) Legal fees—other.
- (21) Working capital interest.

- (22) General liability insurance.
- (23) Travel, entertainment and auto expenses.
- (24) Advertising and public relations.
- (25) Other.

f. No change.

g. Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase which shall not exceed the percentage change in the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the inflation increase shall be 3 percent, notwithstanding the percentage change in the Consumer Price Index.~~

h. State-owned ~~ICFs/MR~~ ICFs/ID shall submit semiannual cost reports and shall receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index. ~~For the period beginning July 1, 2009, and ending June 30, 2010, costs of operation shall be inflated by 3 percent instead of the percentage change in the Consumer Price Index.~~

i. The projected reimbursement for the first annual period will be determined by multiplying the per diem rate calculated for the base period by the Consumer Price Index ~~plus one~~.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by multiplying the lower of the prior year's actual or the projected reimbursement per diem by the Consumer Price Index ~~plus one~~. ~~For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.~~

(2) No change.

ITEM 18. Amend subrule 82.7(3) as follows:

82.7(3) Approval of level of care. Medicaid payment shall be made for ICF/ID care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa Medicaid ~~enterprise (IME) medical services~~ quality improvement organization (QIO) unit.

ITEM 19. Amend rule ~~441—82.7(249A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.12 ~~as amended by 2012 Iowa Acts, Senate File 2336, section 58.~~

ITEM 20. Amend rule ~~441—82.8(249A)~~ as follows:

~~441—82.8(249A) Determination of need for continued stay.~~ For clients not enrolled with a managed care organization, certification of need for continued stay shall be made according to procedures established by the Iowa Medicaid ~~enterprise (IME) medical services~~ QIO unit. For all clients enrolled with a managed care organization, the managed care organization shall review the Medicaid client's need for continued care in an ICF/ID at least annually. The managed care organization must submit documentation to the ~~IME medical services~~ Iowa Medicaid QIO unit for all reviews that indicate a change in the client's level of care. The ~~IME medical services~~ Iowa Medicaid QIO unit shall make a final determination for any reviews that indicate a change in the level of care.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 21. Amend subrule 82.13(1), introductory paragraph, as follows:

82.13(1) Content. The facility shall as at a minimum maintain the following records:

ITEM 22. Amend rule ~~441—82.14(249A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 249A.12 ~~as amended by 2012 Iowa Acts, Senate File 2336, section 58.~~

ITEM 23. Amend subrule 82.15(1) as follows:

82.15(1) Claims. Claims for service for clients not enrolled with a managed care organization must be sent to the Iowa Medicaid ~~enterprise~~ after the month of service and within 365 days of the date

of service. Such claims must be submitted electronically through ~~IME's~~ Iowa Medicaid's electronic clearinghouse.

- a.* No change.
- b.* Adjustments to claims may be made electronically as provided for by the Iowa Medicaid enterprise.

ITEM 24. Amend paragraphs **82.17(2)“a”** and **“b”** as follows:

a. ~~The Iowa Medicaid enterprise,~~ the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit billings to the department and receipts of client participation, to ensure that the facility is not receiving payment in excess of the contractual agreement and that all other aspects of the contractual agreement are being followed, as deemed necessary.

b. ~~The Iowa Medicaid enterprise,~~ the department's contracted managed care organizations, field auditors of the department of inspections and appeals and representatives of the U.S. Department of Health and Human Services, upon proper identification, shall have the right to audit records of the facility to determine proper handling of patient funds in compliance with subrule 82.9(3).

[Filed 12/8/22, effective 2/1/23]

[Published 12/28/22]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/28/22.